

was asked for. It may well be, as counsel for the appellant contends, that there are many persons in Singapore who are accustomed to be addressed as Mr. Lee and in fact there was one such person (not the appellant) in whose name the particular number was entered in the directory. Having regard, however, to the fact that these calls were made to this office in which the appellant was seated, with three telephones at his elbow and the documents to which we have already referred on the table, we consider that the learned District Judge was fully entitled to come to the conclusion that bets were being placed with the appellant by telephone.

Counsel contends that these telephone conversations were improperly received as evidence in the light of section 121 (1) of the Criminal Procedure Code, in that they were statements made to a Police Officer in the course of a Police investigation. We are unable to accede to this argument for the reason that the telephone callers themselves were totally unaware that any Police investigation was in progress, and it would therefore, in our view, be entirely artificial to hold that the bets that they were endeavouring to make were made in the course of a statement to a Police Officer in the course of a Police investigation.

Counsel for the appellant further contends that there was no evidence that the public had "access" to the lottery, within the meaning of section 2 of the Ordinance. We would observe that it would appear from the evidence to which we have referred that one method of laying wagers in this particular lottery was by telephone, three telephone receivers being in position on the table at which appellant was sitting at the time of the raid. This would in our opinion constitute sufficient access within the meaning of the Ordinance. Apart from that, there is no reason to suggest — and the evidence does not establish — that a member of the public wishing to lay a wager would have had any difficulty in effecting entry to the office in which the appellant was seated.

This is sufficient to determine the appeal. No argument was addressed to us on the question of sentence and we would merely observe that in the circumstances a fine of \$3,000, with the alternative of three months' imprisonment, is not excessive.

The appeal must therefore be dismissed and the conviction and sentence affirmed.

Appeal dismissed.

Solicitors: *R. C. H. Lim & Co.*

In re Application by ONG ENG GUAN for an Order of Prohibition in re appointment of S. H. D. ELIAS

[O.C.J. (Rose C.J.) April 27, 1959]

[Singapore — Originating Motion No. 18 of 1959]

Constitutional Law — Prohibition — Application for Order — Whether Order lies to Inquiry Commission — Allegations of bias — Test to be applied — Inquiry Commissions Ordinance (Cap. 52).

This was an application for an Order of Prohibition to restrain a Commissioner appointed under the Inquiry Commissions Ordinance from acting on the ground that he was biased. The Attorney-General raised a preliminary objection that the writ of Prohibition did not lie against a Commissioner appointed under the Inquiry Commissions Ordinance, as the Commissioner had no power to determine questions affecting the rights of subjects and was therefore not a judicial tribunal. The Attorney-General also raised an objection to a passage in an affidavit filed in the proceedings on the ground that the passage was scandalous and irrelevant. The learned Chief Justice reserved his findings on these objections and the application was thereupon heard on its merits.

Held: (1) the Order of Prohibition does not lie against the Commissioner, as the Commissioner had no power to determine questions affecting the rights of subjects;

(2) the passage in the affidavit formed part of the history of the matters submitted for consideration and was therefore not irrelevant;

(3) the Court did not consider that there was a real likelihood of bias in this case, and even if the Order of Prohibition were to lie, the application could not be granted.

Per curiam: "It is to be noted that the deciding factor is not whether there is a reasonable suspicion of bias on the part of even a considerable number of responsible persons, but whether the Court itself — that is in the present case myself — considers that, irrespective of views that may genuinely and reasonably be held in other quarters, there is a real likelihood of bias." *R. v. Camborne Justices* (4) followed.

Cases referred to:—

- (1) *R. v. Electricity Commissioners* (1924) 1 K.B. 171.
- (2) *R. v. Manchester Legal Aid Committee* (1952) 1 All E.R. 481.
- (3) *R. v. London County Council* (1981) 2 K.B. 288.
- (4) *R. v. Camborne Justices* (1955) 1 K.B. 41.
- (5) *R. v. Sunderland Justices* (1901) 2 K.B. 357.

The following cases were also referred to in argument: *R. v. Legislative Committee of the Church Assembly* (1928) 1 K.B. 411; *R. v. Metropolitan Police Commissioner* (1958) 2 All E.R. 717; *R. v. Statutory Visitors Caterham* (1958) 2 All E.R. 766; *Re Clifford &*

O'Sullivan (1921) A.C. 570; *Re Gresvenor & West End Rly. Co.* (1897) 76 L.T. 337; *R. v. Forrest* (1888) 20 Q.B.D. 58; *R. v. Mayor & Justices of Deal* 45 L.T. 439; *Ex parte Wilder* (1902) J.P. 761.

APPLICATION for an Order of Prohibition.

Lee Kuan Yew for the applicant.

Ahmad Ibrahim (Senior Crown Counsel) for the Attorney-General.

Cur. Adv. Vult.

Rose C.J.: This is an application for an Order of Prohibition. The first matter which arises is whether this writ is applicable to a Commission of Inquiry appointed under the Inquiry Commissions Ordinance (Chapter 52). It is conceded that, if the writ lies, it could properly relate to a question of bias.

This matter was considered in the case of *Rex v. Electricity Commissioners* ⁽¹⁾ at page 204 where Lord Atkin says:

"The question now arises whether the persons interested are entitled to the remedy which they now claim in order to put a stop to the unauthorized proceedings of the Commissioners. The matter comes before us upon rules for writs of prohibition and certiorari which have been discharged by the Divisional Court. Both writs are of great antiquity, forming part of the process by which the King's Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; certiorari requires the record or the order of the court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of Justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This passage is quoted with approval by Parker J. in the case of *Rex v. Manchester Legal Aid Committee* ⁽²⁾ at page 486 *et seq.* In the latter case, as Parker J. points out, the real test was whether the Committee in question had the duty to act judicially, the fact that they had legal authority to determine questions affecting the rights of subjects being admitted. The Court there decided — and there is subsequent authority to the same effect — that it is not only a tribunal before which there can be said to be a "lis" that may be held to have a duty to act

judicially. Scrutton L.J. in *Rex v. London County Council* ⁽³⁾ said:

"It is not necessary that the tribunal should be a court in the sense that this court is a court. It is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a court; if it is a tribunal which has to decide rights after hearing evidence and opposition, it is amenable to the writ."

It is true that the learned Lord Justice was there referring to the writ of certiorari, but it is, I think, clear that if either of the writs of certiorari or prohibition apply, then both must do so.

The question that causes me difficulty in the present matter is whether a Commission of Inquiry, such as the one under consideration, has to "decide rights," or in the words of Lord Atkin, "determine questions affecting the rights of subjects." It is clear, for example, that these two writs would lie as against an arbitrator, because an arbitrator in his award necessarily determines questions affecting the rights of subjects. Does a Commission of Inquiry, in its report, do this? It is of course true that terms of reference of Commissions may differ widely in their scope and intention, but the Crown contention is, in effect, that Commissions do no more than make recommendations, if their terms of reference require these, which may or may not be accepted by the authority which appoints them.

Mr. Lee Kuan Yew suggests that the present Commission falls within the ambit of section 63(4) of the Local Government Ordinance, 1957, (No. 24 of 1957) in that it is an inquiry which the Minister has caused to be held within the meaning of that subsection. I do not consider this submission to be sustainable because although the Minister in question, as I am informed in the affidavits, may in his speeches have assumed personal credit for the Commission's appointment, that seems to me to be no more than political hyperbole and cannot affect the true legal position, which is that the Commission is one appointed by the Governor under the Inquiry Commissions Ordinance, no doubt upon the appropriate advice.

In the various countries of the Commonwealth during the last thirty or forty years there must have been many Commissions of Inquiry appointed but no authority was cited to me — and I myself have been able to find none — which indicates that either the writ of prohibition or the writ of certiorari has been held to lie. This seems to me to be significant in that

one of the more common grounds upon which *certiorari* is claimed is that the tribunal has exceeded its jurisdiction. Now, one of the most common criticisms directed against reports of Commissions of Inquiry in various territories has been that the Commission in its report has gone outside its terms of reference. Again and again such criticisms have been made in the appropriate Legislative Assemblies but in no case has any interested party, so far as the law reports demonstrate, had recourse to *certiorari*.

It seems to me that a clear inference is to be drawn from this. Moreover, looking at the matter broadly from the point of view of the public interest, it seems to me that the usefulness of Commissions of Inquiry would be impaired if their proceedings were allowed to be challenged either at the outset or during their continuance by prohibition or at their conclusion by *certiorari*.

The available remedies against a report which may be regarded as unsatisfactory are twofold. First, the appointing authority, in other words the government of the day, may reject all or any of the recommendations; secondly, an interested party or indeed any member of the public who is aggrieved by the report may initiate criticism in Parliament, State Council or Legislative Assembly as the case may be. In the very rare case — and indeed I do not recollect having heard of any such — of a Commission of Inquiry so misconducting itself as to create a scandal, no doubt the appointing authority has the power to withdraw the authority which it has itself bestowed.

In my opinion, therefore, both public interest and past practice point irresistibly to the conclusion that the correct view is that neither of these two writs, *certiorari* or prohibition, lie in the case of a Commission of Inquiry.

That is sufficient, in the view that I have formed, to dispose of the matter. In case that view is incorrect, however, I consider that it is in the interest of the parties that I should express my opinion upon the other matters which have been argued before me.

The Attorney-General has taken out a summons for the deletion, on the ground of its being scandalous and irrelevant, of a passage in paragraph 3 of Mr. Ong Eng Guan's affidavit of the 7th of April, 1959. Having regard to the necessarily political flavour of this whole matter I am disposed to agree with Mr. Lee Kuan Yew's submission that the passage complained of forms part of the history of the matters submitted for my consideration.

Were it necessary, therefore, for the point to be decided, I would dismiss the summons.

On the question of bias, the test as to when a tribunal or an individual should be regarded as biased is exhaustively considered in the case of *Regina v. Camborne Justices*.⁽⁴⁾

What emerges from the review of the authorities in that case is that the proper test should be "is there a real likelihood of bias?" As was stated by the Master of the Rolls in *Rex v. Sunderland Justices*,⁽⁵⁾ "The decision must really turn on the question of fact, whether there was or was not in the circumstances a real likelihood that there would be bias."

It is to be noted that the deciding factor is not whether there is a reasonable suspicion of bias on the part of even a considerable number of responsible persons, but whether the court itself — that is in the present case myself — considers that, irrespective of views that may genuinely and reasonably be held in other quarters, there is a real likelihood of bias.

It is important that this should be borne in mind, as the question that I have to determine is not whether I regard Mr. Elias as in all respects a happy choice, but whether in the light of the considerable opposition to him both on political and personal grounds that has been made apparent by these proceedings, and of the other considerations that have been adduced before me, he is in fact likely to show bias in the matters upon which it would be his duty to report.

The grounds relied upon in support of the contention of bias are first, that Mr. Elias in the course of conversations and by his actions has shown a personal antipathy to the People's Action Party. Secondly, that he has been closely identified with the activities of the former City Council, which were criticised and in some cases nullified by the present Council. Thirdly, that there was an episode with regard to a tender for a lease of certain property by Mr. Elias which, it is suggested, must have left him with a sense of grievance against the responsible Committee.

There is little doubt that Mr. Elias is widely regarded as a controversial figure owing not only to his former association with the City Council but also to the stormy reception that was accorded to the report of a Commission of Inquiry into Election Practices of which he was Chairman.

It would also appear to be the case judging from certain conversations which are alleged to have taken place at a Wedding Reception and in the corridors of these courts that Mr. Elias has

expressed political views which would indicate A that he is not in sympathy with the policies of the People's Action Party. I am not inclined to attach overmuch importance to the differences in recollection as to these conversations expressed in the opposing affidavits. It may well be that relatively casual conversations of such a nature B may create in the minds of the parties different impressions of the weight to be given to them.

While I should be most reluctant to accept the position that the fact of a person being a member or not being a member of a particular political party should be held to weigh against his disinterestedness, I appreciate the weight of the consideration that it might not unreasonably C be thought to be inappropriate to appoint a Commissioner, who has figured as a protagonist in political controversy, to consider matters with a highly political content. As I have already stated, however, the question for my consideration is not the suitability of the appointment but whether, the appointment having been made, D there is a real likelihood of bias on the part of the Commissioner so appointed.

As to the matter of the tender, while it may be that Mr. Elias was guilty of an indiscretion in pursuing inquiries into the fate of his own tender, I am prepared to accept his position that the episode was explained to his satisfaction and left behind no feeling of rancour.

I consider it unnecessary to discuss in further detail the contents of the various affidavits, which have been fully covered in the course of learned counsel's submissions.

Having regard to the bearing on the terms of reference of the Commission of the facts and considerations which have been put before me, I intend no disrespect to the Commissioner when I say that I regard this as a borderline case. The decided cases, however, indicate that courts, naturally enough, are slow to grant orders of prohibition on the head of bias except on the clearest grounds and, while it may be that I regard these highly charged political matters with too detached an eye, I have come to the conclusion that the Commissioner in question, who, I have no doubt, accepted his exacting assignment out of a sense of public duty and who is a person of standing in his profession and the community at large, would not in fact be biased by the considerations to which I have referred.

Were the writ to lie, therefore, I would hold on the facts that the application should not be granted.

I have already stated that in my opinion the writ of prohibition does not lie. These proceedings, however, may well have served a useful purpose in that they may make easier a personal decision which the Commissioner, now that his legal position has been clarified, may consider himself free to take. Whoever conducts this Commission of Inquiry, which is bound to raise controversial issues, will be faced with an exacting and invidious task. However confident Mr. Elias himself may be in his own powers of detachment, the fact that there is a considerable body of responsible opinion which is distrustful of his impartiality — a consideration which may well not have been in his mind when he accepted the assignment — will not only add enormously to the difficulty of that task but also, when his labours are concluded, may well tend to detract from the authority of his report.

There will be no order as to costs.

Application dismissed.

Solicitors: *Lee & Lee.*

LEONG HAN v. KUPUSAMY

[O.C.J. (Smith J.) March 12, 1959]

[K.L. — Civil Suit No. 360 of 1957]

Practice and Procedure — Judgment by default — Setting aside — Principle in exercising discretion — R.S.C. 1957, O. 27 r. 15.

Order 27 r. 15 gives a completely unfettered discretion to a Court to set aside a judgment by default. No time limits of any kind are prescribed.

Principles laid down by Lord Atkin in *Evans v. Bartlam* applied.

Cases referred to:—

(1) *Manickam v. Tremelby* (1949) M.L.J. 90.

(2) *In re Helsby* (1894) 1 Q.B. 742.

(3) *Evans v. Bartlam* (1937) A.C. 473.

APPLICATION under O. 27 r. 15.

T. C. Tang for the plaintiff.

N. A. Marjoribanks for the defendant.

Cur. Adv. Vult.

Smith J.: This is an application under O.27 r.15 by the defendant for the Court to exercise its discretion and set aside judgment given for the plaintiff in default of appearance.

The facts of the case are that the plaintiff alleges that he was knocked down by a motor-car driven by the defendant. On 5th October, 1957, the plaintiff commenced proceedings. The defendant was duly served, did not appear and